IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

MFA.No. 458 of 2001(B)

O.P(MV).NO.311/1997 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANTS/PETITIONERS IN O.P.(M.V) AND ADDL. PETITIONERS 3 TO 5:
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1. **P.V. AYYAPPAN, AGED 67 YEARS,**
   S/O. PALLATH VELAYUDHAN,
   PALLATH HOUSE, PARAPPUKKARA VILLAGE,
   NANDIKKARA.

2. **KALLYANI, W/O. IST APPELLANT AYYAPPAN,**
   DO. DO.

3. **SIDHARTHAN, S/O. AYYAPPAN,**
   DO. DO.

4. **SREELATHA, D/O. AYYAPPAN,**
   DO. DO.

5. **BABU, S/O. AYYAPPAN,**
   DO. DO.

BY ADV. SRI.P.V.BABY,
SRI.A.N.SANTHOSH.

RESPONDENTS/RESPONDENTS IN O.P. (M.V):
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1. **REJI.K.C, S/O. CHACKO,**
   MALALA HOUSE, ALATHUR VILLAGE,
   WADAKKUMCHERY, ELAVUMPADAM,
   ALATHUR TALUK, PALGHAT DISTRICT.

prv.

M.F.A. 458/2001:

2. K.J. KURIAN, S/O. JOHN,
KARUMADATHIL HOUSE,
35/1265 PALARIVATTOM,
COCHIN -25.

3. THE ORIENTAL INSURANCE CO. LTD.,
JOSE JUNCTION, M.G. ROAD,
ERNAKULAM.

BY ADV. SRI.MATHEW SKARIA,
SRI.JOSE THOMAS (PEEDIKAYIL),
SMT.REKHA LAURIAN.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

prv.

J.B. KOSHY & K.P. BALACHANDRAN, JJ.

M.F.A. No. 458 of 2001

Dated this the 29th day of June, 2007

Judgment

A young man, aged 28, was knocked down by the car driven by the first respondent and owned by the second respondent on 20.2.1996. Even though he was taken to the Medical College Hospital, Thrissur, he died within four hours. His legal representatives filed application for compensation before the Motor Accidents Claims Tribunal, Thrissur. Tribunal found that the accident occurred due to the negligence of the first respondent driver of the car and the car was duly insured by the third respondent. But, against a claim of Rs.3,00,000/=, only Rs.69,100/= was awarded as compensation. Only quantum of compensation is disputed by the claimants in this appeal.

2. Deceased was aged 28. If second schedule is taken as a guidance, multiplier to be

fixed is 18. But, deceased was unmarried. Father, mother, brothers and sisters were the claimants. Hence, age of the claimants also has to be considered. According to the claimants, mother was aged only 59 at the time of accident and father was 62. Family membership certificate (Ext.A7) was dated only 27.5.1999 showing that father was aged 67 and mother was 62. If that be so, age of the father in 1996 will be 64 and age of the mother was 59. For a person aged between 55 and 60, multiplier fixed under the Motor Vehicles Act is 8. Considering the age of the mother and deceased, tribunal fixed the multiplier as 8. We see no ground to change the same. According to the claimants, deceased was a mason and he was earning Rs.3,750/= per month. According to the claimants, in the year 1996, a mason in the State was getting a daily wage of Rs.200/= and he was getting work on every day and Rs.3,750/= claimed as monthly income is after reducing the amount spent for personal expenses. Since there was no data regarding

income, tribunal fixed Rs.1,200/= as the dependency income, after deducting personal expenses. Tribunal found as follows:

> "No acceptable evidence is adduced by the petitioners to prove the monthly income of the deceased at the time of accident and death was Rs.3,750/= as claimed in the petition. In the absence of such evidence the net income of the deceased after deducting his personal expenses at the time of accident can be accepted as Rs,1200/=."

But, tribunal deducted 50% of the same and calculated compensation. Deceased was an able-bodied man. Tribunal found that, after deducting personal expenses, he will have a net income of Rs.1,200/= per month. The tribunal did not considerfuture prospects. Even a non-earning person's income under second schedule is fixed notionally at Rs.15,000/= per year for calculation of compensation and dependency loss at Rs.10,000/=.

He was a 28 year old youngster and a mason. Hence, tribunal ought to have fixed at least Rs.1,000/= as the loss of monthly dependency. Hence, compensation payable will be Rs.1000 x 12 x 8 = Rs.96,000/=. Tribunal has awarded only Rs.57,600/-. Hence, claimant will be entitled to an additional amount of Rs.38,400/-. After the accident, he was taken to the hospital and he escaped only after four hours' treatment. Life saving medicines were administered. We are of the view that Rs.1,500/= can be granted as compensation for treatment and medical expenses. We see no ground to enhance the compensation granted under other heads. Hence, claimant is entitled to an additional amount of Rs.39,900/= over and above the decreed amount by the tribunal. Third respondent insurance company is directed to deposit the same with interest at the rate of 7.5% per annum from the date of application till deposit. On deposit of the amount, father and mother of the deceased,

namely, first and second appellants are entitled to withdraw the same.

Appeal allowed partly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY &
K.P.BALACHANDRAN,JJ.

M.F.A.NO.458 OF 2001

Judgment

Dated:29th June, 2007